

MF 03-3

Tax Type: Motor Fuel Use Tax

Issue: Dyed/Undyed Diesel Fuel (Off Road Usage)

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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| <b>THE DEPARTMENT OF REVENUE</b> | ) |                                   |
| <b>OF THE STATE OF ILLINOIS</b>  | ) |                                   |
|                                  | ) | <b>Docket No. 02-ST-0000</b>      |
| <b>v.</b>                        | ) |                                   |
|                                  | ) | <b>Claim for Credit or Refund</b> |
| <b>ABC TRUCKING COMPANY</b>      | ) |                                   |
|                                  | ) |                                   |
| <b>Taxpayer</b>                  | ) |                                   |

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Edward D. McNamara, Jr. of McNamara & Evans for ABC Trucking Company.

Synopsis:

The ABC Trucking Company (“taxpayer”) filed a claim for a refund of motor fuel taxes that were paid on purchases of undyed diesel fuel used for power takeoff pumps during the period of July through September of 2001. The Department of Revenue (“Department”) issued a letter to the taxpayer that reduced the amount of the refund on the basis that the maximum allowable credit or refund for fuel used for power takeoff pumps is 25% of the total gallons consumed. The taxpayer timely protested the Department’s decision. The parties have filed a stipulation of facts and briefs in support of their positions. At the final status conference in this matter, the parties provided

additional oral arguments and requested that this matter be resolved based on their arguments and written submissions. After reviewing the information that was submitted, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The taxpayer uses commercial motor vehicles to transport crude petroleum from wellheads to storage tanks and employs pumps powered by the vehicles' diesel engines to onload and offload the crude petroleum. (Stip. #2)

2. The taxpayer uses undyed diesel fuel in its operations. (Stip. #2)

3. A portion of the undyed diesel fuel purchased for the taxpayer's commercial motor vehicles is used to operate the power takeoff pumps ("PTOs"). This is a non-highway use that is exempt from motor fuel tax. (Stip. #3)

4. On November 16, 2001, the taxpayer filed a claim with the Department for a refund of \$4,709.79 of the motor fuel taxes that were paid on the purchases of undyed diesel fuel during the period of July through September of 2001. The \$4,709.79 was calculated by multiplying the estimated number of non-highway gallons of fuel (21,906) by the tax rate per gallon (.215). (Stip. #1, 4; Joint Ex. #1)

5. The taxpayer determined that 21,906 of the 35,417 gallons of undyed diesel fuel that it purchased were used for the power takeoff pumps, and therefore they were non-highway gallons. This was based upon the assumption that three-quarters (3/4) of a gallon of undyed diesel fuel is consumed per thousand gallons of fuel pumped.<sup>1</sup> The taxpayer arrived at this amount from studies that it had carried out in prior years. (Stip. #4)

6. On December 20, 2001, the Department denied the full claim for refund and reduced the amount to be refunded to \$1,903.61. The Department stated that the maximum refund permitted for power takeoff use is 25% of the total gallons consumed.<sup>2</sup> (Stip. #5, Joint Ex. #2)

#### CONCLUSIONS OF LAW:

Section 13 of the Motor Fuel Tax Act (Act) (35 ILCS 505/1 *et seq.*), which was in effect during the time that the taxpayer purchased its fuel, provides in relevant part as follows:

“Any person other than a distributor or supplier, who loses motor fuel through any cause or uses motor fuel (upon which he has paid the amount required to be collected under Section 2 of this Act) for any purpose other than operating a motor vehicle upon the public highways or waters, shall be reimbursed and repaid the amount so paid. \*\*\*

For claims based upon taxes paid on or after January 1, 2000, a claim based upon the use of undyed diesel fuel shall not be allowed except \* \* \* for claims for the following: \* \* \*

- (1) Undyed diesel fuel used (i) in a manufacturing process \* \* \* or (ii) for testing machinery and equipment in a manufacturing process \* \* \*.
- (2) Undyed diesel fuel used by a manufacturer on private property in the research and development \* \* \* of machinery or equipment intended for manufacture.
- (3) Undyed diesel fuel used by a single unit self-propelled agricultural fertilizer implement, designed for on and off road use, equipped with flotation tires and specially adapted for the application of plant food materials or agricultural chemicals.
- (4) **Undyed diesel fuel used by a commercial motor vehicle for any purpose other than operating the commercial motor vehicle upon the public highways. Claims shall be limited to commercial motor vehicles that are operated for both highway purposes and any purposes other than operating such vehicles upon the public highways.**

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<sup>1</sup> During the time period in question, the taxpayer pumped 29,208,804 gallons of crude oil from its vehicles to the storage tanks. For every 1,000 gallons of crude oil that it pumped, the taxpayer assumed that it used  $\frac{3}{4}$  of a gallon of undyed diesel fuel.

<sup>2</sup> The total gallons consumed (35,417) times 25% equals 8,854 gallons. 8,854 gallons multiplied by the tax rate per gallon (.215) equals \$1,903.61.

- (5) Undyed diesel fuel used by a unit of local government in its operation of an airport if the undyed diesel fuel is used directly in airport operations on airport property.
- (6) Undyed diesel fuel used by refrigeration units that are permanently mounted to a semitrailer, \* \* \* wherein the refrigeration units have a fuel supply system dedicated solely for the operation of the refrigeration units.
- (7) **Undyed diesel fuel used by power take-off equipment as defined in Section 1.27 of this Law.**

The Department shall promulgate regulations establishing specific limits on the amount of undyed diesel fuel that may be claimed for refund.” 35 ILCS 505/13. (emphasis added.)

The Department’s regulation concerning claims for refunds of motor fuel taxes states that claims based on the use of undyed diesel fuel by a commercial vehicle must be based upon actual consumption of undyed diesel fuel. The regulation then identifies the uses that are subject to refund and states the maximum amounts of undyed diesel fuel that may be the basis of a claim for refund for commercial vehicles operating in a dual capacity. The regulation provides a list of the uses and the maximum amounts allowed, which include the following:

| Use  | Maximum                           |
|--|-----------------------------------|
| Commercial vehicles utilizing power take-off equipment (including concrete mixing vehicles and solid waste compacting vehicles)              | 25% of the fuel consumed          |
| Delivery of fuel by a commercial vehicle that is licensed for highway use and is designed or adapted and used for the bulk delivery of fuel. | ¾ gallon per 1,000 gallons pumped |

(86 Ill.Admin.Code §500.235.)<sup>3</sup> The Department contends that the taxpayer's claim falls within the first use listed above, so the taxpayer's claim should be allowed only for 25% of the fuel consumed. The taxpayer argues that its use of the fuel falls within the second use listed above, and it should receive a refund for  $\frac{3}{4}$  gallon per 1,000 gallons pumped.

During the parties' oral arguments, the Department stated that the second use listed above should only apply to commercial vehicles that deliver refined fuel to gas stations. The taxpayer contends that the provision does not restrict the fuel to refined fuel, and therefore the taxpayer's fuel falls under this category. The taxpayer argues that if the Department had intended to restrict the provision to refined fuel, then it should have specifically done so.

The question raised by the parties is whether the term "fuel" as used in the Department's regulation concerning delivery of fuel by a commercial vehicle includes "crude petroleum." The general definition of "fuel" is that it is "something consumed to produce energy, especially a matter such as wood, coal, gas, or oil burned to produce heat." The American Heritage Dictionary, Second College Edition, 1982, p. 537.<sup>4</sup> "Petroleum" is defined as "a natural, yellow-to-black, thick, flammable liquid hydrocarbon mixture found principally beneath the earth's surface and processed for fractions including natural gas, gasoline, naphtha, kerosene, fuel and lubricating oils,

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<sup>3</sup> This regulation has been changed, effective June 24, 2002, and the provision that allows the refund for use for delivery of fuel by a commercial vehicle (maximum of  $\frac{3}{4}$  of a gallon per 1,000 pumped) has been removed.

<sup>4</sup> Similar definitions are found in science resources. One source defines fuel as "any substance that evolves energy in a controlled chemical or nuclear reaction. The most common type of chemical reaction is combustion, the type of oxidation occurring with petroleum products, natural gas, coal, and wood; more rapid oxidation takes place in rocket fuels (hydrogen, hydrogen peroxide, hydrazine) which approaches the rate of an explosion." Hawley's Condensed Chemical Dictionary, 11th Edition, 1987, p. 543. Another source defines it as "any source of heat or energy, embracing the entire range of materials that burn in air (combustibles). A nuclear fuel is any material that produces energy by nuclear fission in a nuclear reactor." The Facts on File Encyclopedia of Science, Vol. I, 1999, p. 321.

paraffin wax, asphalt, and a wide variety of derivative products.” The American Heritage Dictionary, Second College Edition, 1982, p. 928.<sup>5</sup> Petroleum, in its raw form, is not used or consumed to produce energy, and so it is not considered to be a “fuel” under the common meaning of that term. Petroleum must be refined before it reaches a state where it can be used as a fuel, such as gasoline. I am unaware of any use for petroleum in its unrefined form. None of its uses involve burning it in order to use it as a source of power. Once petroleum has been processed or distilled, a variety of fuels are produced, but without the distillation, petroleum is not used as a source of energy. Therefore, the taxpayer’s delivery of petroleum should not be considered to be delivery of fuel under the Department’s regulation.

Recommendation:

For the foregoing reasons, it is recommended that the taxpayer’s claim be reduced to the amount initially allowed by the Department.

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Linda Olivero  
Administrative Law Judge

Enter: February 27, 2003

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<sup>5</sup> The science resources define “petroleum” as follows: “A highly complex mixture of paraffinic, cycloparaffinic (naphthenic), and aromatic hydrocarbons, containing a low percentage of sulfur and trace amounts of nitrogen and oxygen compounds....The most important petroleum fractions, obtained by cracking or distillation, are various hydrocarbon gases (butane, ethane, propane), naphtha of several grades, gasoline, kerosene, fuel oils, gas oil, lubricating oils, paraffin wax, and asphalt...” Hawley’s Condensed Chemical Dictionary, 11<sup>th</sup> Edition, 1987, p. 892. “Thick greenish-brown flammable liquid found underground in permeable rocks....From crude petroleum, various products are made by distillation and other processes: for example, fuel oil, petrol, kerosene, diesel, and lubricating oil. Petroleum products and chemicals are used in large quantities in the manufacture of detergents, artificial fibers, plastics, insecticides, fertilizers, pharmaceuticals, toiletries, and synthetic rubber...” The Facts on File Encyclopedia of Science, Vol. I, 1999, p. 571.